CCDLA
"Ready in the Defense of Liberty"
Founded 1988

Connecticut Criminal Defense Lawyers Association
P.O. Box 1766
Waterbury, CT 07621-1776
(860) 283-5070 Phone/Fax
www.ccdla.com

March 9, 2011

The Honorable Eric D. Coleman
The Honorable Gerald M. Fox.
Chairmen
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: Raised Bill No. 6539, An Act Concerning Sentencing Modification Testimony of The Connecticut Criminal Defense Lawyers Association by Jennifer L. Zito and Edward J. Gavin

Dear Chairmen and Committee Members:

My name is Jennifer Zito and I am the President of the Connecticut Criminal Defense Lawyers Association (CCDLA). With me on this testimony is Edward J. Gavin, Past President of CCDLA. For over 20 years, we have individually represented as private counsel criminal defendants in the trial and appellate courts of the State of Connecticut. On behalf of CCDLA, we urge the passage of Bill No. 6539, An Act Concerning Sentencing Modification, based on our extensive experience representing Connecticut defendants accused and convicted of crime.

As most of you know, CCDLA is a statewide organization of over 300 lawyers dedicated to defending people accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States Constitutions are applied fairly and equally, and that those rights are not diminished.

One of our goals as an organization is to support legislation that we believe will improve the criminal justice system statewide, particularly legislation that serves to facilitate the even administration of justice. CCDLA believes that the adoption of the proposed amended sentence modification statute set forth in Raised Bill No. 6539 meets this goal, and we strongly urge its passage. Raised Bill No. 6539 is intended to permit a sentenced person in Connecticut to seek review and modification of his/her sentence from a court for good cause shown without the permission of the prosecutor for sentences greater than 3 years. Its intended removal of the gatekeeper provision enables all sentenced persons an equal opportunity to demonstrate to the court

good cause why his or her sentence should be modified regardless of geographical location, and apart from the biases, random policies or subjective opinions of the multiple prosecutors in Connecticut's 13 Judicial Districts' Part A and B courts.

B y way of history, Connecticut's sentencing modification statute was enacted in its present form with the gatekeeper function only after indeterminate sentencing was abolished in 1981; prior to 1980 anyone sentenced to a term of more than a year could seek modification of a sentence from the court through a motion or through Sentence Review. Prosecutorial permission was not required. Absent authority from the legislature, the court has no jurisdiction to alter a sentence once it goes into effect. The sentencing modification statute alone has long provided such legislative authority for the court to revisit and potentially modify a sentence.

The gatekeeper provision for sentences over 3 years was adopted as an amendment to the sentence modification statute in 1982 to make a "cohesive body of law" relative to the new definite sentencing scheme that replaced indeterminate sentencing. Its apparent intent was to correlate this statute to the eligibility provision for sentence review under CGS §51-194 et seq. of sentences to serve over 3 years. Prosecutors were authorized to screen modification motions since most of these applicants were also eligible for sentence review. The amendment was misguided, however, in that the two options—sentence modification and sentence review-- are for different purposes and contain different eligibility requirements altogether; one is not comparable to the other or duplicative of the other obviating the need for such approval. The net effect of the amendment, which still exists today in CGS § 53a-39, is often times to preclude any possibility of sentence modification at the whim of a prosecutor even when good cause exists. In many of these cases sentence review would not have been an appropriate vehicle for the defendant to pursue in the first instance as the sentence is not claimed to be inappropriate or excessive; even if it were, this remedy is often time barred as it must be sought within 30 days of sentencing. Raised Bill No. 6539 amending our sentence modification statute seeks to remedy this problem.

Sentence Review is a vehicle for defendants to immediately seek review of an imposed sentence by a three judge panel to assess the appropriateness of the sentence imposed by the sentencing judge. The application for review must be filed within 30 days of sentencing. The sentence must result from a verdict or from a plea bargain only when the judge has sentenced the person above the recommended agreement. Review is unavailable for mandatory sentences, sentences that are agreed upon in a plea bargain, or where the judge imposed a sentence beneath the recommended plea agreement. (CGS §51-195). The Sentence Review Commission can

increase, decrease or affirm the sentence of the original sentencing judge. (CGS §51-196). To be eligible for sentence review, the sentenced person must be ordered confined for 3 or more years. Sentence review is applied for in rare instances and is not premised on any change in circumstances or rehabilitation over time.

By contrast, sentence modification motions can be filed by statute at any time after sentencing relative to non mandatory sentences. The only requirement for filing a motion to modify a total sentence of 3 years or less (not the time of confinement but the actual total sentence, i.e. 4 years suspended with 2 years to serve does not fall in this provision because it is the total sentence of 4 years that controls) is that the sentenced person show good cause to the court why the sentence should be modified. The State can object and be heard on the motion. For sentences over 3 years such as the example cited above, our current statute requires that before the motion can even be filed, the sentenced person must obtain the permission of the prosecutor to file the request notwithstanding the fact that the person would still have to prove to the court good cause to modify, and the prosecutor would have the option to object. As a result, the gatekeeper provision often removes this class of people from having the possibility of modification more than 30 days after the sentence is imposed.

Permission to file motions for modification is given and denied in Connecticut with no regularity or consistency. We know of no protocols related to the granting or denial of permission for these motions. Indeed, such decisions appear random and subjective depending on what office they are requested from and further, from which prosecutor. Some State's Attorney's offices notoriously deny permission requests. Others seem far more reasoned in their decision. As a result, disparate modification opportunities are available throughout the State in violation of our citizens' equal protection and due process rights.

Sentencing modification motions are heard by the sentencing court, and most often by the actual sentencing judge who is in the best position to decide if modification is appropriate based on good cause shown. (Generally something not previously considered by the court at sentencing.) Sentence review, by contrast, seeks "review" from a panel to evaluate the sentencing judge's decision. The two are not performing parallel functions; they are not equal and should not have been linked in this way with a gatekeeper function for sentences over 3 years; in mostly all instances sentenced persons are not advantaged for having had sentence review available to them within the first 30 days after sentence is imposed and should not be penalized with the gatekeeper provision.

Abuse of this statutory authority is prevalent where prosecutors are dissatisfied with the original sentence imposed by the court, or where they simply make a policy of "rarely" granting permission such as the reported long standing policy of the former Waterbury State's Attorney John Connolly. Discretion in sentencing should remain solely within the purview of the court; the State retains the right to object to any such motions.

The Connecticut court has always been given a function similar to that of the parole board to reduce or discharge a defendant by virtue of the sentencing modification statute; the difference is the court can grant modification at any time for good cause shown rather than wait for a parole eligibility date. The proposed language modifying our existing statute to omit the gatekeeper function of the prosecutor will only enhance the court's ability to carry out this function and likely save the State money in the process where good cause is shown. The amended statute importantly still precludes sentenced persons from seeking modification of a mandatory minimum sentence and permits any victim to be heard before the court at a hearing on the motion. In the interest of the fair administration of justice, and for reasons of economic efficiency (i.e. reducing incarceration period or discharging prisoners where warranted), CCDLA urges the passage of Raised Bill No. 6539.

Respectfully submitted,

Jennifer L. Zito, CCDLA President
Edward J. Gavin, Past President